



ARIZONA STATE SENATE
Fifty-Fourth Legislature, Second Regular Session

FACT SHEET FOR S.B. 1459

private attorney retention; municipalities; counties

Purpose

Establishes guidelines for private attorney retention on a contingency fee basis by cities, towns and counties, including a determination of the necessity to enter into a contingency fee contract, contingency fee limitations and reporting requirements.

Background

The state is prohibited to enter into a contingency fee contract with a private attorney unless the Attorney General (AG) first makes a written determination that the contingency fee representation is both cost effective and in the public interest. Statute outlines specific findings that the AG must make in order to approve the representation ([A.R.S. § 41-4802](#)).

Furthermore, private attorneys working for the state on a contingency fee basis have statutory limits on what they may receive as a portion of the state's recovery. The contingency fee received by a private attorney representing the state may not exceed \$50 million, except for reasonable costs and expenses and regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery ([A.R.S. § 41-4803](#)). The AG is required to submit an annual report that describes the use of contingency fee contracts with private attorneys ([A.R.S. § 41-4804](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Approval of Contingency Fee Contracts

1. Prohibits a city, town or county from entering into a contingency fee contract with a private attorney unless the city, town or county attorney makes a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest.
2. Requires the city, town or county attorney's determination to include specific findings for the following factors:
 - a) whether sufficient and appropriate legal and financial resources exist within the city, town or county attorney's office to handle the matter;
 - b) the time and labor required to perform the task, the novelty, complexity and difficulty of the questions involved and the skills necessary to perform the attorney services properly;
 - c) the geographic area where the attorney services are to be provided;
 - d) the amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases; and
 - e) whether the issue is a matter of statewide concern.

3. Requires, if the city, town or county attorney determines it may contract with a private attorney, that the attorney's office requests proposals from private attorneys to represent the city, town or county on a contingency fee basis.
4. Requires the city, town or county to file the proposed contingency fee contract with the AG along with the written determination by the city, town or county attorney.
5. Requires the city, town or county to receive approval from the AG's Office for a contingency fee contract before a contract with a private attorney is effective and enforceable and before any monies may be spent by the city, town or county.
6. Deems the contingency fee contract approved by the AG unless the AG notifies the city, town or county within 60 days that the AG is refusing to approve the contract.
7. Requires the AG to specifically identify the reasons the contingency fee contract fails to comply with outlined requirements if the AG refuses to approve the contract.
8. Allows a city, town or county to correct a contingency fee contract that failed to comply with statutory requirements and resubmit a proposed contract.

Private Attorney Recovery Limitations

9. Limits a city's, town's or county's portion of the recovery that may be awarded to a private attorney pursuant to a contingency fee contract to the following:
 - a) 25 percent of the initial recovery of under \$10 million;
 - b) 20 percent of a portion of a recovery from \$10 million to \$15 million;
 - c) 15 percent of a portion of a recovery from \$15 million to \$20 million;
 - d) 10 percent of a portion of a recovery from \$20 million to \$25 million; and
 - e) 5 percent of any recovery of \$25 million or more.
10. Prohibits the contingency fee received by the city's, town's or county's private attorney from exceeding \$50 million, except for reasonable costs and expenses.

Government Attorney Oversight

11. Requires the following to occur throughout the contingency fee contract period, including any extensions of the contract:
 - a) a government attorney retains ultimate control over the course and conduct of the case;
 - b) a government attorney with supervisory authority is personally involved in overseeing the litigation;
 - c) a government attorney retains veto power over any decisions made by the private attorney;
 - d) any defendant's attorney that is the subject of the litigation may contact the lead government attorney directly without having to confer with the private attorney;
 - e) a government attorney with supervisory authority for the case attends all settlement conferences, including by telephone, teleconferencing or similar electronic devices; and
 - f) decisions regarding settlement of the case may not be delegated to a city's, town's or county's private attorney.

12. Requires the city, town or county attorney to develop a standard addendum to every contingency fee contract that the city, town or county attorney must use in all cases, that describes in detail what is expected of both the contracted private attorney and the city, town or county, including statutory requirements.

Notice of Contingency Fee Agreements with Private Attorneys

13. Requires the city, town or county attorney to post copies of any executed contingency fee contract and its written determinations to enter into a contingency fee contract on the city, town or county attorney's website, within 5 business days after the contract is executed.
14. Requires the contingency fee contract and determination to remain posted online for the duration of the contract, including extensions or amendments to the contract, unless the city, town or county attorney determines that the posting may cause damage to the reputation of any business or person.
15. Requires online posting of the contingency fee contract before a lawsuit is filed by the city, town or county.
16. Requires the city, town or county attorney to post any payment of contingency fees online within 15 days after the payment to the private attorney and stipulates that the payment must remain posted on the website for at least 365 days.

Private Attorney Records

17. Requires a private attorney under a contingency fee contract with a city, town or county to maintain specified records for at least four years after the contract expires or is terminated.
18. Requires the private attorney to make all records available for inspection and copying on request pursuant to public records laws.
19. Requires the private attorney to maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of one-tenth of one hour or less.
20. Requires the private attorney to promptly provide time records to the city, town or county attorney when requested.

Miscellaneous

21. Requires the city, town or county attorney to submit an annual report that describes the use of contingency fee contracts with private attorneys by February 1 of each year and outlines reporting requirements and recipients.
22. Excludes contingency fee contracts for debt collection cases from statutory requirements and limitations.

FACT SHEET

S.B. 1459

Page 4

23. Stipulates that the requirements and limitations imposed on the use of private attorney contingency fee usage does not expand the authority of a city, town or county or one of its employees to enter into contracts where no authority previously existed.

24. Defines *government attorney* and *private attorney*.

25. Becomes effective on the general effective date.

Prepared by Senate Research

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